

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHAMONT L. SAPP,

Plaintiff,

v.

T-MOBILE USA,

Defendant.

Case No. 17-571-RAJ

ORDER

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler recommending that *pro se* Plaintiff Shamont L. Sapp's complaint be dismissed without prejudice. Dkt. # 22. For the reasons that follow, the Court **DECLINES** to adopt the Report and Recommendation.

Sapp alleges that Defendant T-Mobile USA charged him for cell phone services that he was not contractually obligated to pay. He alleges that these charges eventually diminished his credit rating and caused him to sustain other damages. Sapp applied for and was granted permission to proceed *in forma pauperis* under 28 U.S.C. § 1915. Dkt. # 20.

Sapp, who is currently incarcerated, framed these allegations as a civil rights complaint by a prisoner. Dkt. # 21. In Judge Theiler's Report and Recommendation, she recommends that the Court dismiss the complaint because T-Mobile USA is a private entity that cannot be held liable under 42 U.S.C. § 1983. Dkt. # 22 at 2. In doing so, she also recommends that Sapp be afforded the opportunity to include an amended complaint

1 as part of his objections to the Report and Recommendation. *Id.*

2 In accordance with Judge Theiler's recommendation, Sapp has since amended his  
3 complaint by replacing his § 1983 claim with a claim for violations of the Consumer  
4 Protection Act, RCW 19.86.010, *et seq*, breach of contract, and several other claims  
5 arising from T-Mobile USA's allegedly misleading and unlawful conduct. Dkt. # 23.  
6 That complaint is now the operative complaint before the Court.

7 For the reasons stated above, the Court **DECLINES** to adopt the Report and  
8 Recommendation. Dkt. # 22. The clerk of the Court is directed to issue and serve all  
9 process necessary under the Federal Rules of Civil Procedure to notify T-Mobile USA of  
10 the instant action.

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12 DATED this 11th day of July, 2017.

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16 The Honorable Richard A. Jones  
17 United States District Judge  
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